



U.S. Department of Justice

United States Attorney  
Southern District of New York

The Silvio J. Mollo Building  
One Saint Andrew's Plaza  
New York, New York 10007

December 16, 2021

**Via ECF and Email**

Honorable Mary Kay Vyskocil  
United States District Judge  
Southern District of New York  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl St.  
New York, NY 10007-1312

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**Re: *United States v. Jesse Hernandez*, 21 CR 686 (MKV)**

Dear Judge Vyskocil:

The Government respectfully writes to request that the hearing scheduled for January 14, 2022 at 2:30 p.m. in the pending violation of supervised release proceedings in this matter be converted into an arraignment and status conference.<sup>1</sup> Defense counsel consents to this request. At the January 14, 2022 conference, the parties expect that (1) the defendant will deny the specifications and the parties will set a date for the evidentiary hearing and schedule for submissions or (2) the parties will propose a disposition in the pending violation of supervised release proceedings in this matter for the Court's consideration.

**I. Background**

On April 1, 2020, the defendant was sentenced by the Honorable Geoffrey W. Crawford, District of Vermont to time served and three years' supervised release after the defendant pleaded guilty to possession with intent to distribute cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C). On April 1, 2020, Mr. Hernandez was released from federal custody and commenced his three-year term of supervised release. On November 9, 2021, Mr. Hernandez's supervision was transferred to the Southern District of New York (SDNY) based on his residence in this district.

On January 14, 2021, the defendant was arrested by the New York City Police Department (NYPD). The charges that arose from that arrest as well as his failure to report the arrest to the Probation Office in the required time make up almost all of the 10 specifications of violations of the terms of Hernandez's release. In addition, Hernandez tested positive for marijuana use on multiple dates after his arrest.

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<sup>1</sup> The Government offers its sincere apologies for failing to file a submission in connection with the Court's November 29, 2021 order. Despite filing a notice of appearance, the Government was not receiving ECF notices with regards to this matter. The problem has since been fixed.

**A. The Violations**

On November 15, 2021, the United States Probation Office issued a violation report, alleging ten specifications of violations of the terms of Hernandez's supervised release:

- 1) On or about January 14, 2021, in the Bronx, New York, Hernandez committed the state crime of criminal possession of a controlled substance in the third degree: narcotic drug with intent to sell, in violation of N.Y. Penal Law § 220.16(01), when he possessed crack cocaine. (Grade A violation);
- 2) On or about January 14, 2021, in the Bronx, New York, Hernandez committed the state crime of criminal possession of a controlled substance in the third degree: narcotic drug with intent to sell, in violation of N.Y. Penal Law § 220.16(01), when he possessed heroin. (Grade A violation);
- 3) On or about January 14, 2021, in the Bronx, New York, Hernandez committed the state crime of assault on a peace officer, police officer, fireman, or EMT, in violation of N.Y. Penal Law § 120.08, when he punched, kicked, and scratched the officer causing substantial pain, abrasions to the officer's leg and knee, and bruises. (Grade A violation);
- 4) On or about January 14, 2021, in the Bronx, New York, Hernandez committed the state crime of criminal possession of a controlled substance in the fifth degree: with intent to sell, in violation of N.Y. Penal Law § 220.06(01), when he possessed a controlled substance. (Grade B violation);
- 5) On or about January 14, 2021, in the Bronx, New York, Hernandez committed the state crime of criminal possession of a controlled substance in the seventh degree: with intent to sell, in violation of N.Y. Penal Law § 220.03, when he possessed a controlled substance. (Grade C violation);
- 6) On or about January 14, 2021, in the Bronx, New York, Hernandez committed the state crime of criminal possession of a weapon in the fourth degree: intent to use, in violation of N.Y. Penal Law § 265.01(02), when he possessed brass knuckles and a switchblade knife. (Grade C violation);
- 7) On or about January 14, 2021, in the Bronx, New York, Hernandez committed the state crime of assault in the third degree: with intent to cause physical injury, in violation of N.Y. Penal Law § 120.00(01), when he when he punched, kicked, and scratched the officer causing substantial pain, abrasions to the officer's leg and knee, and bruising. (Grade C violation);
- 8) On or about January 14, 2021, in the Bronx, New York, Hernandez committed the state crime of resisting arrest, in violation of N.Y. Penal Law § 205.30, when being

placed under arrest, he flailed his arm, twisting his hand and body, and kicking his legs. (Grade C violation);

- 9) On or about January 17, 2021, Hernandez failed to notify the Probation Office within 72 hours of being arrested by a law enforcement officer. (Grade C violation); and
- 10) On or before April 27, 2021; May 20, 2021; August 2, 2021; September 10, 2021; and October 12, 2021; Hernandez used marijuana. (Grade C Violation).

## **B. The State Proceedings**

Hernandez's state court proceedings are currently ongoing. As defense counsel indicated, the state criminal charges that underly most of the specifications have been adjourned without indictment. Based on recent conversations with the Bronx County District Attorney's Office ("DA"), the Government understands that the DA has now advanced the case for dismissal. The dismissal is not due to the lack of evidence, but rather due to prosecutorial discretion; as a matter of resource allocation, the defendant faces violations of the specifications of his supervised release in this proceeding for the very same conduct at issue in his state court proceeding.

Consequently, it is the parties' belief that once a disposition is reached in the state criminal proceedings, a disposition can be more easily reached in this pending violation of supervised release proceedings.

## **II. The Proposal**

In the event the underlying criminal charges are dismissed or otherwise disposed of in the Bronx, there is a strong likelihood that a disposition may be reached in this VOSR matter. As a result, the parties ask that the Court convert the hearing scheduled for January 14, 2022 at 2:30 p.m. into an arraignment and status conference. If the parties have not reached a disposition by then, the defendant will deny the specifications and the parties will propose the following date for an evidentiary hearing and schedule for submissions in connection therewith, subject to the Court's schedule:

January 28, 2021: The Government produce discovery to the Defense.

February 7, 2021: The Government will file its exhibit list, witness list, and 3500 material.

February 11, 2021: The Defense will file its exhibit list, witness list, and 3500 material.

February 14, 2021: The evidentiary hearing will take place.

Thank you for the consideration of this matter.

Very truly yours,


DAMIAN WILLIAMS  
United States Attorney

by: \_\_\_\_\_  
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Assistant United States Attorney  
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Cc: Susan J. Walsh, Esq.

GRANTED. The parties shall still appear on January 14, 2022 at 2:30 p.m. Status letter due January 10, 2022.

Date: Dec. 17, 2021  
New York, New York

  
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Mary Kay Vyskocil  
United States District Judge